

WILLIAM K. HARRINGTON
United States Trustee for Region 2
U.S. Federal Office Building
201 Varick Street, Suite 1006
New York, New York 10014
Telephone: (212) 510-0500
By: Brian S. Masumoto, Esq.
Trial Attorney

HEARING DATE: October 6, 2015 (10:00 am)
OBJECTIONS: October 1, 2015 (4:00 pm)

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Case No. 15-12178 (SHL)

In re

477 West 142nd Street Housing Development (Chapter 11)
Fund Corp.,

Debtor.

-----X

NOTICE OF MOTION

PLEASE TAKE NOTICE that upon this Notice of Motion and the accompanying memorandum of law, William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”) will move this Court before the Honorable Sean H. Lane, United States Bankruptcy Judge, in the United States Bankruptcy Court, 1 Bowling Green, New York, New York 10004 on **October 6, 2015, at 11:00 a.m.**, or as soon thereafter as counsel can be heard, for an order dismissing this Chapter 11 case, or alternatively, converting the case to one under Chapter 7, and for such other and further relief as this Court may deem just and proper. The original application is on file with the Clerk of the Bankruptcy Court.

PLEASE TAKE FURTHER NOTICE, that objections or other responses, if any, to the motion must (a) be in writing, (b) conform to the Federal Rules of Bankruptcy Procedure and the Local Bankruptcy Rules of the Southern District of New York, (c) be filed with the Bankruptcy Court in accordance with General Order M-242 (as amended) (d) be submitted in hard-copy form

directly to the Chambers of the Honorable Sean H. Lane and (e) be served upon the United States Trustee, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn: Brian S. Masumoto), no later than the objection date set forth above. Such papers shall conform to the Federal Rules of Civil Procedure and identify the party on whose behalf the papers are submitted, the nature of the response, and the basis for such response.

Dated: New York, New York
September 1, 2015

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE

By: /s/ Brian S. Masumoto
Brian S. Masumoto, Trial Attorney
U.S. Department of Justice
Office of the United States Trustee
U.S. Federal Office Building
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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**MEMORANDUM OF LAW OF THE UNITED STATES TRUSTEE
IN SUPPORT OF MOTION FOR AN ORDER DISMISSING CHAPTER 11 CASE,
OR ALTERNATIVELY, CONVERTING THE CASE TO ONE UNDER CHAPTER 7**

**TO: THE HONORABLE SEAN H. LANE,
UNITED STATES BANKRUPTCY JUDGE:**

This memorandum of law is respectfully filed in support of the motion (the “Motion”) of William K. Harrington, the United States Trustee for Region 2 (the “United States Trustee”) for an order dismissing this Chapter 11 case of 477 West 142nd Street Development Fund Corp., (the “Debtor”), or alternatively, converting the case to Chapter 7. The United States Trustee respectfully represents and states as follows:

I. PRELIMINARY STATEMENT

The United States Trustee moves to convert or dismiss this chapter 11 case for two reasons. First, 477 West 142nd Street Development Fund Corp., (the “Debtor”) is a corporation that has not retained counsel. Without counsel, a corporation cannot appear in this court.

Second, the Debtor has failed to file schedules, statements, and other documents required of all chapter 11 debtors. Therefore, the Court should dismiss this case.

II. FACTUAL BACKGROUD

A. General Background

1. On August 5, 2015, the Debtor filed a pro se petition for relief under chapter 11 of the Bankruptcy Code (the “Petition”). ECF Doc. No. 1.
2. The Petition was executed by Shirley Ann Pitts, President. Id.
3. According to Page 1 of the Petition, the Debtor is a corporation. ECF Doc. No. 1. Id.
4. Attached to the voluntary petition are the following: Schedule A, a Creditor Matrix/List of Creditors, and a Credit Matrix Verification page signed by Shirley Ann Pitts. Id.
5. To date, the Debtor has failed to file the following required documents: Summary of Schedules; Schedules B-H; Statement of Financial Affairs; Statement of Operations; a list of Largest Unsecured Creditors; Balance Sheet; Cash Flow Statement; a List of Equity Holders; federal tax returns; and a corporate ownership statement.
6. To date, no legal counsel for the Debtor has filed a Notice of Appearance in the case.

III. DISCUSSION

A. The Governing Law

As amended by the Bankruptcy Technical Corrections Act of 2010, Pub. L. No. 111-327 (Dec. 22, 2010), section 1112(b)(1) of the Bankruptcy Code states, in pertinent part:

the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, for cause unless the court determines that the appointment under section 1104(a) of a trustee or an examiner is in the best interests of creditors and the estate.

11 U.S.C. § 1112(b)(1).

Section 1112(b)(4) contains sixteen examples of events that constitute cause for dismissal. In re FRGR Managing Member, LLC, 419 B.R. 576, 580 (Bankr. S.D.N.Y. 2009). The list of events under subsection (b)(4) is not exhaustive and courts may consider other factors. Id.; see also In re Gucci, 174 B.R. 401, 409 (Bankr. S.D.N.Y. 1994) (noting that the Bankruptcy Court was “not limited to the ten, non-exhaustive, enumerated grounds in 11 U.S.C. § 1112(b)(1)–(10) for finding cause.”). The burden of demonstrating such cause rests with the moving party. In re BHS & B Holdings, LLC, 439 B.R. 342, 346 (Bankr. S.D.N.Y. 2010); In re Ameribuild Const. Mgmt., Inc., 399 B.R. 120, 132 (Bankr. S.D.N.Y. 2009).

B. The Debtor Has Failed to Retain Counsel

A corporation, or other artificial entity, may appear in the federal courts only through licensed counsel. Rowland v. California Men's Colony, 113 S. Ct. 716, 721 (1993); see also Jones v. Niagara Frontier Transp. Auth., 722 F.2d 20, 22 (2d Cir. 1983) (noting that a corporation involved in a legal proceeding must be represented by counsel); In re BSL Operating Corp., 57 B.R. 945, 947 (Bankr. S.D.N.Y. 1986) (noting that the pro se filing of a Chapter 11 petition by a corporation is impermissible); Fed. R. Bankr. P. 9010, Advisory Committee Note (stating that the rule does not purport to change prior holdings prohibiting a corporation from appearing pro se, (citing In re Las Colinas Development Corp., 585 F.2d 7 (1st Cir. 1978))). In the present case, the Debtor has failed to retain counsel. In addition to the legal authority cited above, as a practical matter, the Court should not permit the Debtor to remain in chapter 11 without retaining counsel. Given the significant reporting and disclosure requirements of a small business chapter 11 debtor, it is unlikely that the Debtor, without legal counsel, could effectively and efficiently confirm a chapter 11 plan that maximizes the value to creditors.

C. **The Debtor Has Failed to File Schedules, Statements, and Other
Required Documents**

Section 1112(b)(4)(F) establishes that cause exists where there is an “unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter” 11 U.S.C. §§ 1112(b)(4)(F). Upon the filing of a bankruptcy petition, or within fifteen days thereafter, a debtor must file schedules of assets and liabilities and statement of financial affairs. See 11 U.S.C. § 521(a)(1); Fed. R. Bankr. P. 1007(b)(1).

Here, the Debtor has failed to file the following required documents: Summary of Schedules; Schedules A-H; Statement of Financial Affairs; Statement of Operations; a list of Largest Unsecured Creditors; Balance Sheet; Cash Flow Statement; a List of Equity Holders; federal tax returns; and a corporate ownership statement.

IV. CONCLUSION

WHEREFORE, the United States Trustee respectfully requests that the Court enter an order dismissing this chapter 11 case or alternatively convert to Chapter 7, pursuant to 11 U.S.C. 1112(b), and granting such other and further relief as may be deemed just and proper.

Dated: New York, New York
September 1, 2015

Respectfully submitted,

WILLIAM K. HARRINGTON
UNITED STATES TRUSTEE, REGION 2

By: /s/ Brian S. Masumoto
Brian S. Masumoto
Trial Attorney
U.S. Department of Justice
Office of the United States Trustee
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UNITED STATES BANKRUPTCY COURT
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Case No. 15-12178 (SHL)

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ORDER DISMISSING CHAPTER 11 CASE

Based upon the hearing held before this Court and the motion of William K. Harrington, the United States Trustee for Region 2, and it appearing that appropriate notice has been given, and cause existing for the relief requested, as set forth in the record of the hearing, it is

ORDERED, under 11 U.S.C. § 1112(b), that this case is hereby dismissed; ORDERED, that the Debtor pay to the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930 and any applicable interest pursuant to 31 U.S.C. § 3717 within ten (10) days of the entry of this order and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period.

Dated: New York, New York
, 2015

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

WILLIAM K. HARRINGTON
United States Trustee for Region 2
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UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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Case No. 15-12178 (SHL)

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ORDER CONVERTING CHAPTER 11 CASE TO CHAPTER 7

Based upon the hearing held before this Court and the motion of William K. Harrington, the United States Trustee for Region 2, and it appearing that appropriate notice has been given, and cause existing for the relief requested, as set forth in the record of the hearing, it is

ORDERED, that this case commenced under Chapter 11 of the Bankruptcy Code be and hereby is converted to a case under chapter 7 pursuant to 11 U.S.C.

§ 1112(b), and it is further

ORDERED, that the Debtor pay to the United States Trustee the appropriate sum required pursuant to 28 U.S.C. § 1930 and any applicable interest pursuant to 31 U.S.C. § 3717 within ten (10) days of the entry of this order and simultaneously provide to the United States Trustee an appropriate affidavit indicating the cash disbursements for the relevant period.

Dated: New York, New York
_____, 2015

HONORABLE SEAN H. LANE
UNITED STATES BANKRUPTCY JUDGE

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CERTIFICATE OF SERVICE

STATE OF NEW YORK)

: ss

COUNTY OF NEW YORK)

I, Brian S. Masumoto, hereby declare, under penalty of perjury under the laws of the United States of America, and pursuant to 28 U.S.C. § 1746, that on September 1, 2015, I caused to be served a copy of the Notice of Motion, the Memorandum of Law of the U.S. Trustee in Support of Motion for an Order Dismissing this Chapter 11 case, or alternatively, Converting the case to one under Chapter 7 (the "Motion"), the [proposed] Order Dismissing Chapter 11 Case, and the [proposed] Order Converting Chapter 11 Case, by regular mail upon each of the parties listed on the attached service list by depositing true copies of same in sealed envelopes, with postage pre-paid thereon, in an official depository of the United States Postal Service within the City of New York and State of New York.

Dated: New York, New York
September 1, 2015

By: /s/ Brian S. Masumoto
Brian S. Masumoto

SERVICE LIST

477 West 142nd Street Housing Development Fund Corp.
477 West 142nd Street
New York, New York 10031
Attn: Shirley Ann Pitts

477 West 142nd Funding LLC
c/o Harris Beach LLC
333 Earle Ovington Blvd #901
Uniondale, New York 11553